
(2004) 05 JH CK 0014

Jharkhand High Court

Case No: Criminal M.P. No. 439 of 2003

Anirudh Singh and Another

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: May 12, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202, 482
- Penal Code, 1860 (IPC) - Section 120B, 420, 468

Citation: (2006) 1 JCR 199

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: B.K. Dubey and B.N. Tiwary, for the Appellant; U.K. Choubey, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Hari Shankar Prasad, J.

This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the order dated 7.3.2003 passed by S.D.J.M., Chatra by which cognizance was taken u/s 468/120-B, IPC in Complaint Case No. 177 of 2002.

2. Facts giving rise to the filing of this application are that the father of the complainant had three brothers, namely, Ram Kumar Singh, Ram Nagina Singh and Bishwanath Singh and their father's name was Late Deoki Singh. The name of Deoki Singh was entered in Khata Nos. 1, 7, 3, 10 and 19 in Survey Khatian. The second son of Late Deoki Singh was Ram Nagina Singh who had only one son, Mushan Singh alias Dinanath Singh who died issueless in the year 1975. The entire acquired property of the grant father of the complainant was distributed among the uncles and after the death of his uncle, Ram Nagina Singh and thereafter the death of Mushan Singh alias Dinanath Singh Son of Late Ram Nagina Singh, who died

issueless in the year, 1975. All the properties of grand father of complainant were inherited by Shreenath Singh and two other uncles, Ram Kumar Singh" and Bishwanath Singh. There was an oral partition in between the father and uncles of the complainant and according to that oral partition, complainant and other sons of his uncles are doing cultivation work. It is alleged that on 26.7.2002 the complainant went with his labourers for ploughing the land over plot No. 4, area 1.70 decimals appertaining to Khata No. 7 of village Khapia then accused persons and two others reached there and scolded them and intimated to them that 1.69 decimals of land of plot No. 4 of village Khapia has been purchased by him from issueless brother, Mushan Singh on 18.5.1977 through registered deed No. 5212/77 and as per that sale deed, Anirudh Singh and Ramanand Singh had right, title and possession and complainant has got no right, title and possession and he was forbidden from doing any cultivation work on that land. The complainant was shocked to hear because complainant and all concerned persons were aware of the fact that cousins of complainant who were entitled to 1/4th share of grand father (died issueless) and entire property vested with complainant and two uncles of the complainant. Complainant went to Chatra Court in the year, 2002 and inquired whether Mushan Singh alias Dinanath Singh had executed any deed in the year, 1977 in favour of Anirudh Singh and Rama Nand Singh but he got information that papers are not available in Chatra registry office and he went to Hazaribagh on 28.7.2002 and inquired about sale deed and found the same to be correct and he obtained certified copy of the sale deed No. 5212, dated 18.5.1977 on 29.7.2002. He was further shocked to find that in the sale deed the complainant has put his signature as identifier. He was further shocked that when Mushan Singh died in the year, 1975, how could he execute the sale deed in the year, 1977 and he suspects that some body has setup any one as Mushan Singh and got sale deed executed.

3. Learned Counsel for the petitioners submitted that the instant case is a case of civil nature as it relates to the fact that when Mushan Singh died in the year, 1975, how could he execute sale deed in the year, 1977 and further that when the complainant has put his signature as identifier and he is now denying about his signature, this fact has to be decided by examination of evidence and similarly this is a matter of record whether Mushan Singh alias Dinanath Singh died in the year, 1975 or not and whether he was alive In the year, 1977 or not and, therefore, no case under Sections 468 and 420, IPC is made out because the complainant is himself full brother of the petitioners and the alleged disputes are regarding the share of Late Mushan Singh, as Mushan Singh was own uncle of the complainant as well as of the accused persons. The complaint petition has been filed after a long delay as sale deed was executed in the year, 1977 in which this complainant was also a witness and now he is denying his signature. It was further pointed out that this nature of dispute cannot be decided in the criminal. Court because till date the sale deed is in existence and is not cancelled by a competent Court of jurisdiction, no case against the petitioner is made out. This question can only be adjudicated by

a civil Court of competent jurisdiction on the basis of evidence. As the civil Court is only place where it can be decided whether the alleged sale deed executed in favour of the petitioner by Mushan Singh is genuine or not or it is forged one and this criminal case is not at all maintainable. It was further pointed out that continuance of the case would be an abuse of the process of the Court. It was further pointed out that it has not been alleged in the complaint petition as who were ploughing the land of the share of Mushan Singh after his alleged death in the year. 1975 but the case is that in the year, 2002 when complainant and his brother went to plough the land, some objections were raised by Anirudh Singh and Rama Nand Singh and by that occurrence, the complainant has tried to buildup a false case because the land must have been ploughed from 1975 to 2001, till before the alleged date of occurrence.

4. On the other hand, learned Counsel for the opposite parties submitted that the learned Court below held inquiry u/s 202, Cr PC and found prima facie case and took cognizance on the basis of the evidence which has come in course of inquiry. In this connection, learned Counsel for the opposite parties placed reliance upon [Pratibha Rani Vs. Suraj Kumar and Another](#), in which when a woman enters the matrimonial home, the ownership of stridhan property does not become joint with her husband or his relations and criminal proceeding for its misappropriation against husband or in-laws is maintainable and it cannot be quashed u/s 482, Cr PC. The learned Counsel also placed reliance upon 2000(3] BLJ 335 wherein it has been held that complaint petition cannot be quashed merely on the grounds that civil remedy is available to the complainant.

5. On perusal of materials available on record and after going through the submissions and the evidence, I find that the dispute is relating to some property and the dispute is in between the full brother and petitioners, who are said to be full brothers of complainant who got executed the property belonging to Mushan alias Dinanath Singh and the allegation is that the complainant was also an identifier and he has put his signature. The allegation is that the sale deed was executed in the year. 1977 taut the executant had already died in the year, 1975 and some one else has been setup as identifier and whether the sale deed was genuine or forge can only be decided in the civil Court and besides that, there is no other dispute. In that view of the matter, whether the sale deed is. genuine or not has to be decided by a civil Court of competent jurisdiction. In such a property matter, cases of this nature are filed only to pressurize the other side to spare some portion of the property which he got from some one else so that he may save himself from harassment and i.e. why the complainant files such cases to harass the other side to left some property in the name of the complainant or such persons who filed such suit. In this connection reliance may be placed upon 2001 (2) ECC 353 wherein it has been held that when there were no ingredients on penal provision, on which cognizance was taken, cognizance was held to be bad in law and quashed. Reliance may further be placed upon Pepsi Food Ltd. and Anr. v. Special Judicial Magistrate and Ors. 1998 (1)

ECC 171 (SO wherein it has been held that exercise of inherent jurisdiction in criminal matters depends on the facts of the case. It was further held that alternative remedy may not be efficacious some times. Reliance may also be placed upon [Keshav Kumar Roy Vs. State of Jharkhand and Others](#), wherein it has been held that when whole allegations are based on the agreement entered into between the parties and only civil liability is there, continuance of criminal prosecution will be an abuse of the process of the Court.

6. In the facts and circumstances of the case and the materials available on record and after discussions of case law referred to above, the fact, whether the complainant has put his signature as identifier or not and Mushan Singh alias Dinanath Singh was dead in the year 1975 or was alive and whether he is executant of the alleged sale deed No. 5212 dated 18.5.1977 and whether deed is forged or not, can be decided by a civil Court of competent jurisdiction, as this is a case purely of civil nature.

7. In the result, this application is allowed and the impugned order taking cognizance dated 7.3.2003 is hereby quashed.